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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

HMO/150896

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 25, 2013, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 15, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's PA request for coverage of orthodontia.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Meri DeGarmo, Nurse Consultant  
Division of Health Care Access And Accountability

Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County.
2. In or about April, 2013, the petitioner's provider submitted a PA request for orthodontia treatment for the Petitioner.

3. On May 15, 2013, the HMO denied the PA request finding that the MA guidelines criteria of “a severe and handicapping malocclusion determined by a minimum Salzmann Index of 30” was not met.
4. The DHS Dental Consultant determined the Petitioner’s Salzmann Index score is 24.
5. On June 20, 2013, DHS upheld the HMO denial and issued a notice to the Petitioner.
6. On July 25, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.
7. The Petitioner is a 13 year old male. He has soreness in his jaw joint and gets headaches several times/week. His mouth gets sore when chewing food.

### **DISCUSSION**

Orthodontia is not an MA-covered service. Wis. Adm. Code, §DHS 107.07(4)(j). However, medical services provided to recipients under age 21 pursuant to Early and Periodic Screening, Diagnosis and Treatment (EPSDT) must be covered if the EPSDT health assessment and evaluation indicates that they are needed. 42 C.F.R. §441.56(c); Wis. Adm. Code, §DHS 107.22(4). Prior authorization is granted when the generic authorization criteria at §DHS 107.02(3) are met. Those criteria include the requirement of medical necessity. The DHS has defined medical necessity in its policy document, the Prior Authorization Guidelines Manual, page 125.004.03. The Manual requires a Salzmann Index score of 30, or the documentation of unusual circumstances that make the recipient's malocclusion handicapping. See also the MA Providers Handbook. Part B, Appendix B118.

The Salzmann score is a rating of the person’s dental malocclusion, that is, how far from normal occlusion the person’s teeth are. Petitioner’s Salzmann score, as determined by the DHS dental consultant, is 24. Extenuating circumstances could be that, despite a low Salzmann, the malocclusion causes the person to have unusual difficulty eating or speaking, or the person has documented psychological problems caused by the abnormal occlusion.

There are essentially two means to determine that a request should be granted when the DHCAA determines a Salzmann score to be below 30. One way would be to provide evidence and argue that the Salzmann score actually is 30 or above. The other way is to provide evidence of extenuating circumstances.

The Petitioner’s mother testified that the Petitioner gets headaches which she attributes to the problems with his teeth. She also testified that he gets soreness in his mouth and jaw when eating. There was no evidence that Petitioner is unable to eat. While I can certainly understand why petitioner and his mother would desire the braces to straighten his teeth, I do not have the authority to disregard the DHS’ approval criteria. Accordingly, based upon the above, I conclude that the DHS correctly denied petitioner’s PA request for orthodontia because petitioner does not meet the MA criteria for orthodontia of a minimum Salzmann score of 30 and extenuating circumstances have not been established.

### **CONCLUSIONS OF LAW**

The agency properly denied the PA request.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

## REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

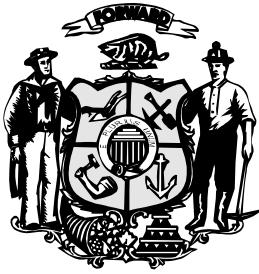
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 11th day of October, 2013

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 11, 2013.

Division of Health Care Access And Accountability